



Form GSOP 1-PIN (04/98)

STATE OF CALIFORNIA
Department of General Services - Office of Procurement

PURCHASE ORDER

Page 1

Purchase Order No. Rev. Date
62056 6/23/2008

Supplier No. 810978	Solicitation No. 56874	Delivery Date As Specified	FOB Point Destination	Invoice Terms
S h T i o p DEPT OF TRANSPORTATION (AS SPECIFIED)		C h a T r o g e DEPT OF TRANSPORTATION 4050 TAYLOR STREET SAN DIEGO, CA 92110 ATTN: ANDREW RICE		
Agency Billing 60063	Agency Purchase Estimate 11-2086JW	Purchase Estimate 67088	Revision 0	
Agency Contact JOHN WILLIAMS		Phone 916-227-6031	Date Received	

BARRIER SYSTEMS INC.
180 RIVER ROAD
RIO VISTA, CA 94571
Attn: BYRON WEST

Phone: 707-374-6800

Item No.	Quantity	Unit	Commodity Code	Description	Unit Price	Extension
THE GENERAL PROVISIONS FOR NON-IT COMMODITIES ARE HEREBY INCORPORATED BY REFERENCE. THESE GENERAL PROVISIONS CAN BE OBTAINED BY PHONING (916) 375-4400 OR BY ACCESSING OUR WEBSITE AT: www.documents.dgs.ca.gov/pd/modellang/GPnonIT0407.pdf						
THE FOLLOWING INFORMATION IS PROVIDED FOR AGENCY USE ONLY:						
PRIME CONTRACTOR: NS						
FISCAL YEAR: 2007/2008						
1	12500	EA	9706-999-0001-2	BARRIER CRASH (AS DESCRIBED) CONCRETE REACTIVE TENSION SYSTEM-QUICKCHANGE MOVEABLE BARRIER SYSTEM (CRTS-QMB):	820.0000	10,250,000.00
Brand: CRTS SYSTEM Model: C050236 H2 CONCRETE BARRIER Packaging: C010332 18" RTS VLB						
PO Miscellaneous Charges and Discounts						Dollar Value
VOLUME DISCOUNT IN DOLLARS						- 348,500.00
Total Value:						9,901,500.00

Sales and/or use tax to be extra unless noted above

Buyer LONNIE WILLIAMS	Phone 916-375-4586	BOC Number 14395
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7/1/08

Department of General Services - Office of Procurement

Form GSOP 2-PIN (04/98)

Page 2 (Last)

Item No.	Quantity	Unit	Commodity Code	Description	Unit Price	Extension
<p><u>TERMS AND CONDITIONS:</u></p> <p>THE FOLLOWING ATTACHED DOCUMENTS ARE PART OF THIS PURCHASE ORDER.</p> <ol style="list-style-type: none"> 1. CALTRANS ADMINISTRATIVE REQUIREMENTS OF TEN (10) PAGES. 2. CALTRANS EXHIBIT "A" SCOPE OF WORK OF TWO (2) PAGES. 3. CALTRANS TECHNICAL SPECIFICATIONS (CRTS-QMB) OF THREE (3) PAGES. <p><u>F.O.B. DESTINATION:</u></p> <p>For the purpose of this purchase order, only F.O.B. Destination will be accepted.</p> <p><u>DELIVERY INSTRUCTIONS:</u></p> <p>Delivery shall be made in accordance with the Caltrans Administrative Requirements for this solicitation.</p> <p>Delivery shall be made during normal business hours, Monday - Friday, from 8:00 AM to 3:30 PM, except State holidays.</p> <p>Vendor shall contact agency seven (7) days prior to delivery to make arrangements for delivery.</p> <p>CALTRANS CONTACT: Gerard Chadegian Phone: (619) 767-2362 Fax: (619) 688-2587</p> <p><u>SCPRS REGISTRATION:</u></p> <p>This Purchase order has been registered into the state contract and procurement registration system (https://www.scprs.dgs.ca.gov/). The registration number is 26600608313891.</p> <p><u>CHANGE ORDERS:</u></p> <p>This Purchase Order may be amended, modified, or terminated at any time by mutual agreement of the parties in writing. Change orders amending, modifying or terminating the Purchase Order, including any modifications of the compensation payable may be issued only by the State Procurement Officer. All such change orders shall be in writing and issued only upon written concurrence of the supplier. Termination, as that term is used in this section does not include termination for default of the supplier.</p>						

CALTRANS ADMINISTRATIVE REQUIREMENTS

SOLICITATION 56874

1. CHANGES

- A. The State of California Department of Transportation (DEPARTMENT) may direct, in writing, changes, including changes to the quantities originally ordered, specifications, or drawings. No change in unit prices or an extension of time shall be granted to Contractor, for any quantity variations, if the total quantity of items as actually required varies not more than plus or minus 20 percent. Variations of quantities by more than plus or minus 20 percent will be subject to an equitable adjustment, if requested in writing by the Department or the Contractor and the adjustment shall be based solely upon the variation of the quantities.
- B. **Contractor shall assert any claims for adjustment which would result from the implementation of the Department's comments on Contractor's technical documents within thirty (30) calendar days from the date of Contractor's receipt of such comments and no adjustment will be made hereunder unless the DEPARTMENT confirms the change by a written revision after mutual agreement between the DEPARTMENT and the Contractor.** However, nothing herein shall excuse Contractor from proceeding with the agreement, as changed, prior to negotiation of the equitable adjustment.

2. DELIVERY

- A. Timely performance and deliveries are essential to this order. The barriers shall be available by December 31, 2010. However, Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events which will be excusable for being beyond Contractor's reasonable control only upon fulfillment of the following conditions:
 - i. within seven (7) calendar days of the commencement of any excusable delay Contractor shall provide the DEPARTMENT with written notice of the cause and extent thereof, as well as request for a schedule extension for the estimated duration thereof; and
 - ii. within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide the DEPARTMENT with written notice of the actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.
- B. Delivery shall be FOB destination, with the destination at a site within 100 miles of Poway, CA. The DEPARTMENT shall have no liability for goods until accepted at their final destination by the DEPARTMENT's Project Manager or his/her designee. It is the DEPARTMENT's responsibility to load and transport barrier from final destination site and install the barriers at the project location. Contractor shall provide a representative during the transfer and installation of barrier to insure proper handling and installation of barrier by the DEPARTMENT's contractor.

3. SUSPENSION

Notwithstanding any other provisions of this Agreement, DEPARTMENT may suspend, or extend the time for Contractor's performance at any time, from time to time, upon ten (10) calendar days prior to written notice of such suspension or extension. Thereafter, Contractor shall resume performance as directed by the DEPARTMENT. In the event of such suspension or extension, Contractor shall be entitled to reimbursement for additional costs reasonably and necessarily incurred by Contractor directly attributable to such suspension or extension period to the extent that such additional costs are actually incurred. Contractor shall submit such documentation, as the DEPARTMENT may deem necessary to substantiate any such costs actually incurred. The DEPARTMENT will make the final determination of the validity of any claim for reimbursement and the amount, if any, thereof.

4. NONWAIVER

Failure of the DEPARTMENT to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design shall not release Contractor from any of the warranties or obligations of this agreement and shall not be deemed a waiver of any right of the DEPARTMENT to insist upon strict performance hereof, or any of its rights or remedies as to any such good, regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by the DEPARTMENT operate as a waiver of any of the terms hereof. A requirement that a Contractor's document is to be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comments," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from the DEPARTMENT to proceed, and shall not mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

5. INDEPENDENT CONTRACTOR

- A. Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this agreement it shall act as an independent contractor and not as an employee of the DEPARTMENT. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this agreement. Except as otherwise specifically provided, as an independent contractor, Contractor will be solely responsible for determining means and methods for performing any services necessary to perform work under this Agreement.
- B. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor is entitled. The DEPARTMENT shall not make any federal or state tax withholdings on behalf of Contractor. The

DEPARTMENT shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor agrees to indemnify the DEPARTMENT for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment, which the DEPARTMENT may be required to make on behalf of Contractor or any employee of Contractor for work done under this Agreement.

- C. Except as the DEPARTMENT may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of the DEPARTMENT in any capacity whatsoever, as an agent or otherwise. Contractor shall have no authority, express or implied, to bind the DEPARTMENT or its members, agents or employees, to any obligation whatsoever, unless expressly provided in this Agreement.

6. QUALITY STANDARDS & SUBSTITUTIONS

- A. Except as otherwise expressly provided herein, Contractor shall be responsible for all inspection and testing, and agrees to strictly follow the standards of quality specified by the DEPARTMENT in addition to those customary in the industry. The DEPARTMENT or its agent shall be afforded free access to plants of the Contractor and its suppliers in order to make surveillance inspections to monitor compliance with contractual quality requirements, as well as, the DEPARTMENT's or its agent's right to inspect, examine and test the goods which shall extend through the manufacturing process, the time and shipment, and a reasonable time after arrival at the ultimate destination. Contractor's failure to adhere to the standards of quality required under this Agreement shall be deemed to be reasonable grounds for insecurity justifying a written demand from the DEPARTMENT that Contractor provide adequate assurance of Contractor's ability to meet said standards.
- B. Goods shall not be deemed accepted until finally inspected and examined at final destination.
- C. The making or failure to make any surveillance inspection or examination of, payment for, or acceptance of the goods, shall in no way impair the DEPARTMENT's right to reject nonconforming goods, or to avail itself of any other remedies to which the DEPARTMENT may be entitled, notwithstanding the DEPARTMENT's knowledge of the nonconformity, its substantiality, or the ease of its discovery.

7. EXPEDITING

The goods furnished under this Agreement shall be subject to expediting by the DEPARTMENT. The DEPARTMENT shall be afforded free access to Contractor's shops, factories or places of business, and those of Contractor's suppliers, for expediting purposes. As required by the DEPARTMENT, Contractor shall supply schedules, unpriced copies of purchase orders and progress reports for the DEPARTMENT's use in expediting.

8. SUBSTITUTIONS

Substitutions shall not be permitted without express written permission from a DEPARTMENT employee with the title of Division Director or higher.

9. WARRANTIES

- A. Contractor warrants that all goods and labor furnished or performed under the Agreement shall be satisfactory for their intended purposes, shall be free from liens or other encumbrances and shall be free of all defects in the design, materials, and workmanship for a period of four years from installation of the final section of barrier, regardless of whether the same were furnished or performed by Contractor or by any

of its subcontractors of any tier (the "Warranty Period"). Any defect in any such goods or labor during the applicable Warranty Period, due to defective design, equipment, materials, or workmanship shall be redesigned, repaired or replaced within a time period and in a manner acceptable to the DEPARTMENT.

- B. Neither testing nor acceptance by the DEPARTMENT or the DEPARTMENT's agent of materials or work performed, or final acceptance, partial or final payment, nor any provision of this Agreement shall relieve Contractor from the responsibilities defined in this Section.
- C. The goods and services provided hereunder and any associated equipment delivered hereunder are subject to the following warranties:
 - i. Contractor warrants that the services to be provided hereunder shall be performed in a professional manner and shall reasonably conform to customary practices and quality of similar services provided in Contractor's industry. Barrier Systems, Inc. (BSI) agrees to re-perform, in a timely manner, at no additional cost to the DEPARTMENT, any service provided hereunder which does not reasonably conform to such standards.
 - ii. Contractor warrants that the goods sold hereunder shall be free from defects in material and workmanship and conform to the applicable specifications as set forth in the Technical Specifications attached to the Agreement. Contractor further warrants that any product or component part manufactured by Contractor will be free from defects in material or workmanship. Contractor agrees to repair or replace at its discretion, in a timely manner and without charge, any such goods that are defective as to design, workmanship or material provided:
 - a) Written notice of the claimed defect is given to Contractor. In the case of defects apparent on cursory visual inspection, the DEPARTMENT shall give notice within 90 days of the delivery date. In the case of defects not apparent on cursory visual inspection, the DEPARTMENT shall give notice within four years from the installation of the final section of barrier.
 - b) Warranty benefits shall not apply to (i) any goods that have been subject to improper storage, accident, misuse or unauthorized alterations, or that have not been installed, operated, and maintained in accordance with approved procedures and (ii) any components manufactured by the DEPARTMENT. Contractor shall provide written materials to the DEPARTMENT sometime prior to delivery of the first section of barrier to the DEPARTMENT which state all information the DEPARTMENT needs to comply with the requirements of this subsection.
 - c) The warranty hereunder shall be void as to the particular piece of equipment if such equipment is altered or a repair is attempted or made by other than Contractor, or other than with written authorization or pursuant to the terms of this Agreement, by the DEPARTMENT.
- D. Contractor warrants that any software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, will substantially provide the function(s) set forth in the applicable

specifications. Contractor shall, at its option, without charge, revise or replace such nonconforming software, provided:

- i. Notice of the claimed defect is given Contractor within the applicable warranty period.
 - ii. Software shall not be deemed to be defective if the software or the medium is exposed to any computer virus or to any condition in excess of those published in the applicable specifications(s).
 - iii. Contractor's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Contractor's written instructions.
 - iv. The warranty stated herein shall be void as to the software affected if such software (or its host medium) is altered (or alterations are attempted) by other than Contractor.
- E. All goods provided in any portion of this Project shall be new products. Any commercial off-the-shelf software shall be new and the latest appropriate release versions and shall have been obtained specifically for this Project.
- F. Contractor shall provide comprehensive and continuing warranty repair and restoration services on all aspects of the delivered goods, including but not limited to hardware and software products during the Warranty Period. Any warranty from a subcontractor or supplier to Contractor, which exceeds this time period, shall be extended to the DEPARTMENT for the same period of time as given to Contractor.
- G. It is understood and agreed that time is of the essence with respect to all corrective work to be undertaken pursuant to the warranty herein contained, and Contractor shall promptly commence corrective work upon receipt of written notice from the DEPARTMENT. Contractor shall diligently pursue such corrective work to completion.
- H. Contractor is responsible for all warranty covered repair work. The DEPARTMENT shall provide Contractor with warranty claim and failure information on the nature and conditions of the failure in a format and in a level of detail recommended by Contractor and approved by the DEPARTMENT. The DEPARTMENT will provide Contractor said written notice with reasonable promptness, but in any event not later than ten (10) days after observing the defect or failure. Unless otherwise directed in this notice, Contractor shall commence corrective work at the time specified by DEPARTMENT, but in no event later than twenty-four (24) hours after notification of the defect or failure.
- I. Contractor shall perform such tests as the DEPARTMENT or its agent may require, to verify that any redesign, repairs and replacements comply with the requirements of the Agreement documents. All costs associated with such redesign, repair, replacement, and testing, including removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne by Contractor. All transportation and shipping costs for defective and replacement parts under warranty, shall be paid for by Contractor.
- J. To prevent delays and disruption to the DEPARTMENT's operations, the DEPARTMENT shall have the right, when practical and feasible, in its opinion, to the continued use of any such goods, equipment, systems, and work deemed defective or unsatisfactory, until they can be taken out of service pursuant to the corrective work hereby undertaken by Contractor.

- K. During the warranty period(s) the DEPARTMENT is authorized by the Contractor to commence repair and/or replacement of defective hardware and software products delivered hereunder by the Contractor after the Contractor has been notified of the defect and the Contractor has advised the DEPARTMENT that it cannot respond within the response timeframes stated hereunder or if Contractor fails to perform necessary redesign, repair, replacement or testing within the timeframes stated in this Section. All such resultant repair and/or replacement by DEPARTMENT or other authorized representative, shall be performed by qualified maintenance personnel in accordance with the Operation and Maintenance manuals furnished by the Contractor.
- L. Contractor will be responsible for reimbursement or replacement of any parts required for the repair. Contractor shall also reimburse the DEPARTMENT or it's agent for all of its direct labor costs, as determined by multiplying the number of man-hours actually required to correct the defect by a per hour, straight wage rate and an overhead rate of 1.75.
- M. Replacement parts and repairs provided pursuant to corrective work hereunder shall be subject to prior approval by the DEPARTMENT and shall be tendered and performed in the same manner and extent as items originally delivered. Contractor warrants such redesigned, repaired or replaced work against defective design, materials, and workmanship for the remainder of the warranty period of the replaced part, or a period of six months from the date of acceptance of the new (or repaired) part, whichever occurs later.
- N. Once any single item provided by Contractor hereunder fails for a third time for the same fault at any point during the warranty period, the item shall be designated as "Faulty 3 Times." This item shall be replaced with a new unit by Contractor and the replaced item shall never be returned to service in this or any future DEPARTMENT project. Contractor shall warrant any such replacement item for the remainder of the original applicable warranty period or six months from acceptance of the new item, whichever occurs later.
- O. The rights and remedies of the DEPARTMENT under this Section are not intended to be exclusive and shall not preclude the exercise of any other rights or remedies provided for in the Agreement, or by law or otherwise.
- P. Contractor shall supply only products and equipment (including hardware and software) which are in current production by the manufacturer, and for which the manufacturer has not issued any notice of intent to cease such production within the next twelve (12) months. It is Contractor's responsibility to have the systems and devices remain functional for the duration of the warranty period, and the DEPARTMENT therefore requests that only those items be used for which there is a long-term availability projected. In the event that any equipment or software item is discontinued by its manufacturer, Contractor shall immediately develop and discuss with the DEPARTMENT an alternative warranty service response plan. Regardless of these circumstances, Contractor shall continue to supply warranty service for all components' applicable warranty period with no adjustment in compensation.
- Q. Orders for additional equipment or licenses may be executed at any time prior to termination of the Agreement. If the DEPARTMENT desires to procure additional equipment or licenses, the price for such orders shall be determined based on the per unit price specified for that item in Contractor's proposal. As part of this option the DEPARTMENT shall have the right to equipment from Contractor at a unit price to be

provided by Contractor within 60 days after execution of this Agreement. The DEPARTMENT shall not be required to purchase the entire software suite when exercising this option to purchase software.

- R. Contractor shall provide the DEPARTMENT copies of all applicable service, instructional, and manufacturer's warranty materials for all equipment, software, or other deliverable under this Agreement. The DEPARTMENT shall be placed on Contractor's regular mailing list to receive all announcements, including updates and upgrades to the software furnished for this Project. This includes both application software and system software, and software, which Contractor develops for this Project. "Updates" are those enhancements to the software that Contractor generally makes available as part of the annual maintenance program. "Upgrades" are any new feature or major enhancement of the software that Contractor markets and licenses for additional fees separately from the updates. During the Warranty Period, any software updates or upgrades which become available and are applicable to the functionality of the supplied software on this Project shall be provided and installed within a mutually agreed upon timeframe thereafter in the DEPARTMENT's system. During the Warranty Period, Solutions to problems with Contractor supplied software hereunder, whether discovered and corrected on this Project or elsewhere, shall be documented and supplied to the DEPARTMENT without additional charge. Contractor shall also provide announcements pertaining to Contractor-produced software for five years after the Warranty Period concludes and shall include announcements pertaining to software produced by third-party suppliers during the Warranty Period.
- S. Contractor has tested the impact performance of its moveable barrier and crash cushion systems and gates under controlled conditions, however, Contractor does not represent nor warrant that the results of those controlled conditions would necessarily avoid injury to persons or property. **CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY FOR CLAIMS ARISING BY REASONS OF DEATH OR PERSONAL INJURY OR DAMAGE TO PROPERTY RESULTING FROM ANY IMPACT, COLLISION OR HARMFUL CONTACT WITH THE PRODUCTS OR NEARBY HAZARDS OR OBJECTS BY ANY VEHICLE, OBJECTS OR PERSONS.**
- T. **CONTRACTOR'S LIABILITY UNDER THIS WARRANTY IS EXPRESSLY LIMITED TO REPLACEMENT FREE OF COST (IN THE FORM AND UNDER THE TERMS ORIGINALLY SHIPPED), OR TO REPAIR OR MANUFACTURE BY CONTRACTOR, PRODUCTS OR PARTS NOT COMPLYING WITH CONTRACTOR'S SPECIFICATIONS, WHETHER SUCH CLAIMS ARE FOR BREACH OF WARRANTY OR NEGLIGENCE. CONTRACTOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSSES, DAMAGES OR EXPENSES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY SUCH LOSSES, DAMAGES OR EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING OR USE OF THE PRODUCTS OR GOODS FROM ANY OTHER CAUSE RELATING THERETO, OR FROM PERSONAL INJURY OR LOSS OF PROFIT.**

10. SURVIVAL

Notwithstanding the DEPARTMENT's acceptance of the goods and payment therefore, Contractor shall remain obligated under all clauses of this Agreement, which expressly or by their nature extend beyond and survive such acceptance and payment.

11. LANGUAGE AND MEASURE UNITS

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this agreement shall be in metric ("Systems International d' Units," or "SI units") with the United States equivalents clearly shown.

12. APPLICABLE LAW - DEFINITIONS

The definition of terms used, interpretation of this agreement, and rights of all parties hereunder shall be construed under and governed by the law of the state of California, United States of America. "DEPARTMENT" means the State of California Department of Transportation or its designee. "Contractor" means the person, firm or corporation to which this Agreement is addressed. "Goods" means those articles, materials, equipment, supplies, drawings, data, and other property, and all services, including design, delivery, installation, inspection, testing, and expediting, specified or required to furnish the goods ordered by this agreement.

13. STANDARDS AND CODES

- A. Whenever references are made in this Agreement to standards or codes in accordance with which the goods are to be manufactured or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes.
- B. In case of conflict among any referenced standards and codes, or between any referenced standards and codes and the Technical Specifications, the DEPARTMENT will determine which will govern.

14. ASSIGNMENT & SUBCONTRACTING

- A. Contractor shall not assign, sublet or transfer (whether by assignment or novation) this Agreement or any rights under or interest in this Agreement without the written consent of the DEPARTMENT, which may be withheld for any reason, provided however, that claims for money due to Contractor from the DEPARTMENT under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of such assignment or transfer shall be promptly furnished to the DEPARTMENT in writing.
- B. If Contractor subcontracts any of the work to be performed under this Agreement, Contractor shall be as fully responsible to the DEPARTMENT for the acts, errors, or omissions of Contractor's subcontractor and of the persons employed by the subcontractor as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor of Contractor and the DEPARTMENT. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions stipulated in this Agreement to be applicable to the subcontractor including, but not limited to, provisions pertaining to costs, records, and payment methods. Contractor shall bind every subcontractor and every subcontractor of a subcontractor to the terms of this Agreement, unless specifically noted to the contrary in the subcontract in question, approved in writing by the DEPARTMENT.

15. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To the DEPARTMENT:

State of California Department of Transportation
Attention: Andrew Rice M.S.333
4050 Taylor Street
San Diego, CA 92110

To Contractor:

Barrier Systems, Inc.
Attn: Chris Sanders, CFO
180 River Road
Rio Vista, CA 94571

16. RECORDS RETENTION

Contractor shall maintain complete and accurate records with respect to actual time and allowable costs incurred under this Agreement. All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified. Contractor shall provide reasonable access to the representatives of the DEPARTMENT, or its designees, including representatives of the applicable government agencies if this Agreement is funded in whole or in part with state or federal funds, to such books and records and any other books, documents, papers or records of the Contractor that are related to this Agreement. The DEPARTMENT, the State, the State Auditor, FHWA, FTA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations shall have the right to examine and audit such books and records and to make transcripts or copies from them as necessary. Contractor shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement for a period of five (5) years from the date of final payment under this Agreement. This Section must be included in any subcontract entered into as a result of this Agreement.

17. COVENANT AGAINST CONTINGENT FEES

- A. No elected official(s) of the DEPARTMENT or any of its member agencies, the State of California or the United States Government shall become directly or indirectly interested in or personally benefit from the financial proceeds of this Agreement or in any part of it. No officer or employee of the DEPARTMENT shall become directly or indirectly interested in or benefit from the financial proceeds of this Agreement or any part of it.
- B. Contractor warrants that its firm has not employed, retained, paid, or agreed to pay any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission,

percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

18. ENTIRE AGREEMENT

This Agreement represents the entire understanding of the DEPARTMENT and Contractor as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the DEPARTMENT and Contractor.

EXHIBIT A

SCOPE OF WORK - CALIFORNIA I-15 MANAGED LANES PROJECT

BARRIER SYSTEMS, INC. (SELLER) WILL FURNISH TO THE DEPARTMENT (BUYER) THE FOLLOWING ITEMS:

BARRIERS

41,010 lineal feet (12,500 meters) of Concrete Reactive Tension Barrier (CRTS) and Variable Length Barriers (VLB's) as specified in Exhibit A.

Seller will provide the appropriate number of Variable Length Barriers as determined by the seller to ensure that the Reactive tension system is capable of accomplishing a continuous lateral transfer of the CRTS at a working speed of 10 miles per hour.

These VLB'S will be substituted one for one at the same unit price. Seller will determine the actual number of VLB's after reviewing final drawings of the highway. It is estimated that there will be approximately 300-400 VLB's for this project.

The scope of work does not include the machine or guidance system as outlined in the quote dated September 26th 2005.

TRAINING

Seller will have a representative available at no charge for up to two weeks to help Buyers contractor install the system. It is understood that this may occur anytime between when the barriers are made and December 2012.

PIN PULLER AND PUSHER

Seller will provide 4 double lifting devices and a hydraulically powered pin pusher and puller to help the buyer's contractor with the installation process. These items will be at no additional cost to the Buyer.

DELIVERY

Upon receiving a notice to proceed, Seller will manufacture the barriers at a storage site chosen by Seller located within 100 miles of the project site centered near the town of Poway California. It is Buyers responsibility to load, transport and install the barriers at the time they are installed on the highway. Installation must be made in accordance with manufacturers specifications. Seller shall provide a representative to give technical assistance for proper loading, transfer, and installation of the barrier.

VLB'S will be delivered to the same site at sellers cost in time to be installed to complete the barrier. If they are complete prior to delivery seller will invoice for them but store them in Rio Vista California until they are required. Delivery of VLB's will be at no additional cost to Buyer. All VLB's will be delivered on or before December 31, 2010.

STORAGE

Seller will store finished barriers at the delivery location until December 31, 2012 at no additional cost to Buyer. If after this date the barrier is not removed from the delivery location a fee of \$1500.00 per month will be assessed to the Buyer.

QUALITY CONTROL

Seller has an extensive QC procedure. It is expected that the Seller will receive timely input from Buyer or Buyers representative with regards to final approval of mix designs. At the beginning of the job Buyers representative will sign off on finish quality of sample barriers that will be used as first article samples for all other barriers manufactured. Buyer or Buyer's representative will have the ability to access the site that the barriers are being manufactured to perform any testing and sampling of materials necessary for quality assurance purposes. If product does not meet specifications the Buyer or Buyer's representative can reject effected product at no cost to the Buyer. Any such rejected product will not be incorporated into the I-15 Managed Lanes Project. Buyer may assign a full time inspector to the project at their own cost.

Seller's QC testing personnel shall be ASTM certified for concrete testing. All welding shall meet the visual acceptance criteria of AWS-D1.1.

EXHIBIT A (CONT'D)

TECHNICAL SPECIFICATIONS CONCRETE REACTIVE TENSION SYSTEM- QUICKCHANGE MOVEABLE BARRIER (CRTS-QMB) SPECIFICATION TB 990901 REV 4

The Concrete Reactive Tension System-Quickchange Moveable Barrier (CRTS-QMB) is designed to meet the rigid requirements of deployment in moveable barrier applications where positive separation technology is required and where lane widths and lateral space are limited.

DESCRIPTION

Each barrier element of the CRTS-QMB shall be 32" (810 mm) high, 18" (460 mm) wide and 39" (1000 mm) long (Attachment, Figure 1, B000711). The individual elements shall weigh approximately 1500 pounds (680 kg) and rest on four rubber feet to increase the coefficient of friction between the barrier element and the road surface.

The barrier elements are connected in an end-to-end fashion with tensioning hinge mechanisms and steel pins that are at least 1.3" (33 mm) in diameter. The minimum length of CRTS-QMB to create a longitudinal barrier is 100 feet (30 meters). Each end of the CRTS-QMB must be anchored to the roadway with an anchorage that is capable of reacting a 100,000-pound (450,000 Newton) tensile load in the barrier for NCHRP TL-3 installations or capable of at least a 50,000 pound (225,000 Newton) tensile load in the barrier for an NCHRP TL-2 installation, in order to perform with the minimum deflection characteristics. If the end of the CRTS-QMB is not anchored to the roadway a minimum length of 80 sections must be deployed upstream of the point where minimum deflection is required for a TL-3 system, or 40 sections must be deployed upstream of the point where minimum deflection is required for a TL-2 system. Minimum deflection characteristics for the CRTS-QMB system are shown in the attached CRTS-QMB Deflection Curve.

MATERIALS

The primary elements of the CRTS-QMB shall be constructed of ASTM A-36 steel and high strength concrete. All external steel shall be stainless steel or hot dipped galvanized in accordance with ASTM A 123 or ASTM B 695, except miscellaneous hardware which may be stainless steel, brass, or zinc plated. All structural welds shall be continuous.

- Welded wire fabric shall conform to ASTM standard A185
- Reinforcing bars shall be Grade 40 or 60 per ASTM A615
- Stainless steel shall be made to ASTM A240 /240m, Grades 302 to 305.

CONSTRUCTION METHODS

Barriers will be manufactured by either the wetcast or drycast methods. Minimum concrete 28-day compressive strength shall be 4,000 psi. All surface voids or rock pockets shall be repaired. Surface "bugholes" caused by trapped air bubbles shall be permitted. Air entrainment shall be as specified by the ordering agency, $\pm 1.50\%$.

- A concrete plant shall be approved in accordance with Caltrans Standard Specifications, Section 90-1.01 & 90-5.02 in advance of barrier production.
- Concrete mix designs will be approved through Caltrans prior to use in manufacturing.
- Barriers will be cured in accordance with Section 90-7.01 B and 90-7.04

SYSTEM REQUIREMENTS

The CRTS-QMB system, when installed in accordance with the manufacturers instructions, shall function as a longitudinal barrier and be able to resist the impact of vehicles in accordance with the National Cooperative Highway Research Program Report 350 (NCHRP 350) Test Level 3.

The system shall minimize lateral displacement upon impact. The system shall minimize clearance between barrier hinges, resulting in a nominal metal to metal connection. During impact by an errant vehicle, the tension in the barrier system resists the penetration of the vehicle and limits the lateral displacement of the barrier.

Reactive Tension System Variable Length Barriers (RE-VLBs) shall be added to the length of the CRTS-QMB installation in order to allow a smooth lateral transfer through the Barrier Transfer Machine. The number and location of QVLB units that shall be required will vary depending on specifics of the application, number and degree of curves, changes in elevation, etc.

SPECIFICATION FOR REACTIVE TENSION SYSTEM VARIABLE LENGTH BARRIER

Reactive Tension System Variable Length Barrier (RTS-VLB) shall be fabricated from A36 steel, utilizing all welded construction. Final assemblies may be bolted together. The minimum pin-to-pin length of the RTS-VLB shall be at least 39 1/2" (980 mm) with a maximum pin-to-pin length of approximately 53 1/2" (1330 mm).

The RTS-VLB shall consist of an inner shell and an outer shell; both hot dip galvanized in accordance with ASTM, A123. The minimum weight of the assembled RTS-VLB shall be 675 lb (306 kg).

The maximum outside dimensions of the RTS-VLB shall approximate the outside dimensions of the standard Reactive Tension Moveable Barrier System (RTMBS). The minimum outside cross sectional dimensions of the RTS-VLB inner shell shall not be less than the inner dimensions of the outer shell by more than 1" (25 mm) at any location. The hinges utilized on the RTS-VLB shall be similar to the hinges used on the remainder of the system. The longitudinal strength of the RTS-VLB under impact shall be consistent with the strength of the standard RTMBS.

When the RTS-VLB is positioned on the road surface, it is held open by the adjacent barriers. During normal transfers and maneuvers it is free to adjust to keep the system in equilibrium, however in case of an impact at any location on the barrier chain the RTS-VLB it is automatically hydraulically locked.

The Reactive Tension System Variable Length Barrier can also be used as a variable length connector between sections of RTMBS or between RTMBS and an anchorage system. If used in this manner, the RTS-VLB can be extended or compressed as necessary by supplying a tension or compression load with the Barrier Transfer Machine (BTM) or by using manual devices such as a "come-a-long", "port-a-power" or other similar means. Multiple RTS-VLB units can be connected in order to open and close longer sections if the need arises. Depending on the application, some of these may be hydraulically operable to facilitate operational maneuvers. When hydraulically operable the units are referenced as RTS GATE VLBs.

